IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1601 OF 2005
A/w
C.A. Nos 49 of 2006 and C.A.No.482 of 2006

Hirachand Sohanraj Jain ...Appellant

Vs.
Shankar Baban Dubli & ors. ...Respondents

Mr. N.V. Walawalkar, Senior Counsel, a/w Mr Nitin V. Gangal for the Appellant.

P.K. Dhakephalkar, Senior Counsel, i/b. M/s. Utangale & Co. for Respondent no.2.

CORAM : D.B.BHOSALE, J.
DATED : 4TH JULY, 2007.

P.C.:

1. We have heard Mr Walawalkar, learned senior counsel for the appellant and Mr Dhakephalkar,learned senior counsel for the respondent no.2.

2. This second appeal is directed against concurrent findings recorded by the Courts below dismissing a suit filed by the appellant- plaintiff. The suit was filed for injunction simplicitor. Mr. Walawalkar, learned senior counsel for the appellant, vehemently submitted that some time in 1986, 32G proceedings were initiated and concluded by issuing certificate under section 32M of Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "BT & AL

Act"), however, before that in 1980, the suit lands were converted into non agricultural use in 1980 and hence the order passed by the tenancy authorities in 32G proceedings was without jurisdiction and as a consequence thereof 32M certificate is illegal. The Courts below ought to have examined this and either referred the issue to the tenancy authorities or declared the certificate illegal. In my opinion, this submission is devoid of any merits. The suit was for injunction simplicitor. No declaration was sought by the appellant- plaintiff. It appears that respondent no.1 was a tenant in the suit land. In 1957 his name was deleted from the record of rights and as a result thereof he had to initiate proceedings under section 70(b) of the B.T. and A.L Act. After those proceedings were concluded in his favour, the 32G proceedings were initiated and they were concluded by issuing certificate under section 32M. It is pertinent to note that Mehta, the owner of the property was heard in 32G proceedings. It is against this backdrop status of the land on the tillers' day will have to be taken into consideration and not in 1980 when the land was allegedly converted into N.A. Admittedly on tillers day the suit lands were agricultural lands. I do not find any fault with the orders under section 32G and 32M. I am informed that the appellants have taken development

rights in respect of the suit properties from one Allwin, who had taken those rights of development from one Seiko. Seiko had taken the development right from the owner of the lands one Mehta. The Courts below have considered all these aspects and dealt with the submissions in proper prospective. I am informed that the respondents have already developed the land and constructed buildings thereon. Keeping this all in view and considering the concurrent findings recorded by the Courts below and as I find sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this Court to disturb the findings of fact in the second appeal, this appeal fails and is dismissed as such. As a consequence thereof, the civil applications are disposed of.

3. If the appellants have any rights in the property, they may seek appropriate remedy in appropriate Court. While making this observation I shall not be understood to have expressed any opinion on such rights being available to them.

(D.B.Bhosale,J.)